

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re :
: **Chapter 11**
SEARS HOLDINGS CORPORATION, et al., :
: **Case No. 18-23538 (RDD)**
: **(Jointly Administered)**
Debtors.¹ :
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**STIPULATION, AGREEMENT AND ORDER
DEEMING PROOF OF CLAIM TIMELY FILED**

This stipulation, agreement, and order (the “**Stipulation**”) is entered into by and between Sears Operations, LLC (“**Operations**”) and Entech Sales and Service, LLC (“**Claimant**”). Operations and Claimant collectively are referred to in this Stipulation as the “**Parties**,” and each as a “**Party**.” The Parties stipulate and agree as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Rover Brands Business Unit, LLC (f/k/a Sears Brands Business Unit Corporation) (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

RECITALS

WHEREAS, on October 15, 2018 (the “**Commencement Date**”), Sears Holdings Corporation and certain of its affiliates (collectively, the “**Debtors**”) commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

WHEREAS, on February 2, 2019 the Bankruptcy Court entered the *Order (I) Establishing Deadline to File Proofs of Claim and Procedures Relating Thereto, (II) Approving the Form and Manner of Notice Thereof, (III) Approving Procedures for the Resolution of Claims Asserted Pursuant to 11 U.S.C. § 503(b)(9), and (IV) Prohibiting Vendors From Pursuing such Claims Outside the Procedures* (ECF No. 2676) (the “**Bar Date Order**”) fixing the deadline for filing proofs of claim in these chapter 11 cases as April 10, 2019.

WHEREAS, on April 10, 2019, Claimant filed Claim Nos. 18283, 18290, and 18311, asserting general unsecured claims against Kmart Operations LLC, Sears, Roebuck & Co., and Kmart Corporation, respectively.

WHEREAS, on April 11, 2019, Claimant filed Claim No. 18409 asserting a general unsecured claim in the amount of \$820,294.23 against Operations (the “**Proof of Claim**”).

WHEREAS, by order dated October 15, 2019, the Bankruptcy Court confirmed the *Debtors’ Modified Joint Second Amended Joint Chapter 11 Plan of Sears Holding Corporation and Its Affiliated Debtors*.

WHEREAS, the Parties have agreed, subject to approval of the Bankruptcy Court, to deem the Proof of Claim as timely filed subject to the terms and conditions set forth below.

TERMS

NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT HEREBY IS STIPULATED AND AGREED, BY AND BETWEEN THE PARTIES, THROUGH THE UNDERSIGNED, AND UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:

1. The Stipulation shall have no force or effect unless and until approved by the Bankruptcy Court (the “**Effective Date**”).

2. Upon the Effective Date, notwithstanding anything to the contrary in the Bar Date Order, the Proof of Claim shall be deemed timely filed against Operations.

3. Nothing contained herein shall be construed as a waiver by the Debtors of their right to object to the Proof of Claim on any grounds other than the timeliness of the filing of the Proof of Claim.

4. This Stipulation shall constitute the entire agreement and understanding of the Parties relating to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter hereof.

5. Each of the undersigned who executes this Stipulation by or on behalf of a Party represents and warrants that he or she has been duly authorized and empowered to execute and deliver this Stipulation on behalf of such Party.

6. This Stipulation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Stipulation to present any copies, electronic copies, or facsimiles signed by the Parties here to be charged.

7. This Stipulation shall not be modified, altered, amended or vacated without the written consent of all Parties hereto or by further order of the Bankruptcy Court.

8. This Stipulation shall be governed by, and construed in accordance with, the laws of the State of New York, except to the extent that the Bankruptcy Code applies, without regard to principles of conflicts of law that would require the application of laws of another jurisdiction.

9. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from this Stipulation.

(Signature Page Follows)

IN WITNESS WHEREOF, this Stipulation has been executed and delivered as of the day
and year first below written.

Dated: April 27, 2020

Dated: April 27, 2020

By: /s/ Jacqueline Marcus
Ray C. Schrock, P.C.
Jacqueline Marcus
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*Attorneys for Debtors
and Debtors in Possession*

Attorney for Claimant

SO ORDERED

Dated: May 5, 2020
White Plains, New York

/s/Robert D. Drain

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE